This Recommended Order and Decision became the Order and Decision of the Illinois Human Rights Commission on 4/29/03.

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
	)	
LASHAWNA J. TAYLOR,	)	
	)	
Complainant,	)	
	)	**CHARGE NO(S):** 2000CF0783
and	)	**EEOC NO(S):** 21BA00167
	)	**ALS NO(S):** 11360
EASTERN LOBBY SHOPS, LP.,	)	
	)	
Respondent.	)	

RECOMMENDED ORDER AND DECISION

This matter comes to be heard on Respondent's Motion for Summary Decision along with Respondent's Memorandum in Support of Motion for Summary Decision with affidavits and exhibits attached. Complainant filed a written Response to the motion. The Respondent filed a Reply as well as submission of additional recent case law in support of its motion for summary decision. The matter is ripe for decision.

CONTENTIONS OF THE PARTIES

Respondent contends that a ruling for summary decision should issue in its favor as a matter of law because Complainant cannot provide direct evidence of pregnancy-related discrimination, nor can she produce any indirect evidence to establish a *prima facie* case of pregnancy discrimination. Respondent argues that Complainant cannot show that she was treated differently then other similarly situated non-pregnant employees. Respondent further argues that Complainant cannot prove that Respondent's articulated reason for its actions was a mere pretext for discrimination, and that there is no evidence that Respondent was motivated by illegal pregnancy discrimination.

Respondent also argues that they were not aware of Complainant's pregnancy and that she forged a pregnancy script an attempt to imply that she knew of her pregnancy prior to her termination date, when in reality she was not aware of her pregnancy until 21 days after her termination.

Complainant objects to summary decision and argues that Respondent treated Complainant differently from other non-pregnant similarly situated employees. Complainant contends that Respondent is not entitled to a Summary Decision because Complainant has presented evidence of discrimination. Complainant argues that she was never disciplined or warned about her job performance and that she was treated badly by her supervisor after she had indicated to him that she might be pregnant. Complainant alleges that she was terminated after Respondent was aware of her condition.

FINDINGS OF FACT

Based on the record in this matter, I make the following findings of fact:

1. Complainant, LaShawna J. Taylor, is a female.

2. Complainant was hired by Respondent, Eastern Lobby Shops, on December 15, 1997 and worked as a manager for their 4034 shop until August 10, 1999 when she was terminated.

3. On July 16, 1999, Respondent determined that a shrink problem (financial losses) was occurring at the shop Complainant was assigned to. The Respondents attributed a portion of that loss to Complainant and a recommendation to remove her was made.

4. The Respondent determined that the portion of the loss attributed to Complainant was due to her failure in following company procedure for counting the shipment of incoming newspapers.

5. On August 5, 1999, Complainant's Supervisor, Ken Evilsizor, requested that she research and report on store "Refund and Error Correct" information from the July 31, 1999 to August 3, 1999 daily Reports, by August 9, 1999.

6. Complainant refused to do the work, claiming that she had already supplied the information to Respondent's corporate office. Respondent requested the information several more times from Complainant, who continued to refuse to comply with the request. Complainant's supervisor advised her that a written warning would be issued to her if she did not meet the August 9, 1999 deadline.

7. On August 9, 1999, Complainant advised her supervisor that she was unable to comply with his request. At that time, a meeting was held between Complainant, her supervisor and Respondent's District Manager, Dean Gray. Complainant refused to discuss the matter regarding her inability to comply with Mr. Evilsizor's request. Complainant became angry and told the men, "You do whatever you have to do." As a result of the meeting, Complainant was told that she would be suspended for three (3) days.

8. Mr. Evilsizor contacted Respondent's Operations Director, Grant Jardine, and informed him of the August 9, 1999 meeting. Mr. Evilsizor and Mr. Jardine determined that due to Complainant's behavior and failure to follow company policy, that termination of Complainant's employment was appropriate.

9. On August 10, 1999, Complainant was notified that she was being terminated due to her performance. Complainant refused to sign the termination memo given to her.

10. At the time of the August 9, 1999 meeting, Complainant was insubordinate and had failed to follow Respondent's work policies.

11. At the time of Complainant's termination, Respondent was not aware that Complainant may have been pregnant.

12. Complainant supplied the Respondent with a University of Chicago Hospital medical script showing that Complainant was pregnant. The date of the test results was forged so that it was backdated from the original date of August 31, 1999 to read August 9, 1999, one day prior to Complainant's discharge.

CONCLUSIONS OF LAW

1. Complainant is an "aggrieved party" as defined by section 1-103(b) of the Illinois Human Rights Act, 775 ILCS 5-1-101et seq. (1996).

2. Respondent is an "employer" as defined by section 2-101(B) (1) (a) of the Act and is subject to the provisions of the Act.

3. The Commission has jurisdiction over the parties to and the subject matter of this action.

4. The Commission has adopted the standards used by the Illinois courts in considering motions for summary judgment for motions for summary orders.

5. Complainant has failed to present any direct evidence of pregnancy discrimination.

6. Complainant cannot establish a *prima facie* case of age discrimination.

7. Respondent can articulate a legitimate, nondiscriminatory reason for its actions.

9. There is no genuine issue of material fact on the issue of pretext.

10. There is a no genuine issue of material fact on the issue of pregnancy discrimination.

11. Respondent has filed competent, admissible evidence to show that the reasons for terminating Complainant was not based on her condition of pregnancy, but was based upon Complainant's poor work performance and violation of Respondent's instruction to submit a report by August 9, 1999.

12. All of the evidence in the record shows that Complainant's pregnancy was not a factor in Respondent's decision to terminate her employment. There is no evidence in the record from which a fact-finder might draw a reasonable inference of pregnancy discrimination.

12. Based on the record in this matter, there is no issue of material fact for decision. Respondent is, therefore entitled to a summary decision in its favor as a matter of law.

DETERMINATION

Respondent's Motion for Summary Judgment should be granted because, based upon the admissible evidence in the record, there is no genuine issue of material fact as to Complainant's claim that Respondent discriminated against her on the basis of her pregnancy.

DISCUSSION

As to this case before me, this matter is being considered pursuant to Respondent's Motion for Summary Judgment, so certain special rules must be followed. A summary decision is analogous to a summary judgment. Cano v. Village of Dolton, 250 Ill. App. 3d 130, 620 N.E.2d 1200 (1st Dist. 1993). A motion for summary decision should be granted where there is no genuine issue of material fact and the moving party is entitled to a recommended order in its favor as a matter of law. Strunin and Marshall Field & Co., 8 Ill. HRC Rep. 199 (1983). Because the resulting dismissal of the cause of action is a drastic measure, summary judgment should be awarded with caution. Solone v. Reck, 32 Ill.App.2d 308, 177 N.E.2d 879 (1st Dist. 1961). A court must consider the record as a whole, construing "the pleadings, depositions, and affidavits most strictly against the moving party and most liberally in favor of the opponent in order to determine whether there is a genuine issue as to a material fact." Rivan Die Mold Corp. v. Stewart-Warner Corp., 26 Ill.App.3d 637, 641, 325 N.E.2d 357, 360.

Where the party moving for Summary Decision files supporting affidavits containing well-pleaded facts and the opposing party files no counter-affidavits, the material facts set forth in the affidavits stand as admitted. Glen View Club v. Becker, 113 Ill.App.2d 127, 251 N.E.2d 778 (1st Dist. 1969); and, Fooden v. Board of Governors, 48 Ill. 2d 580, 272 N.E.2d 497 (1971). The party opposing the motion for Summary Decision cannot rely solely on his Complaint to rebut the allegations of fact in a supporting affidavit, and even the allegations of the Verified Complaint of Complainant cannot prevail over the uncontradicted facts set forth in the affidavits presented by Respondent in support of their motion for Summary Decision. Janes v. First Federal

Savings & Loan Association, 11 Ill.App.3d 631, 297 N.E.2d 255 (1st Dist. 1973); and, Walsh v. Monumental Life Insurance Co., 46 Ill. Ajpp.2d 431, 197 N.E.2d 124 (1st Dist. 1964).

While Complainant has denied certain of Respondent's allegations in her response and has made other vague assertions in support of her case, these vague and unsworn statements are not the competent, admissible evidence required to support a party's position on Summary Decision. Carruthers v. Christopher & Co., 57 Ill.2d 376, 313 N.E.2d 457 (1974) (fact to be considered are evidentiary facts): see also Loveland v. City of Lewistown 84 Ill.App.3d 190, 405 N.E.2d 453, 39 Ill.Dec. 700 (3rd Dist. 1980). Complainant basically denies the majority of Respondent's allegations and maintains that just prior to her termination, sometime in August of 1999, she became ill and informed her supervisor, Mr. Evilsizor, that she "may be pregnant." In attempt to bolster her contention that Respondent was aware of her physical condition, Complainant presented Respondent with a medical script that showed that she was diagnosed as being pregnant on August 9, 1999. The script clearly shows that the date had been altered from the actual date. Respondent supplied an affidavit from the attending nurse who stated that the date of the script was August 31, 1999. Respondent maintains that they were never made aware of the possibility that Complainant was pregnant at the time they terminated her employment on August 10, 1999, and that the basis for the firing was due to her poor performance.

Generally speaking, in order to establish a prima facie case of pregnancy-related

discrimination, a complainant must show that: 1) she was pregnant, 2) she was subject to adverse action, and 3) non-pregnant employees were treated more favorably. In the Matter of Sonia Rivera, 2001 ILHUM LEXIS 93 (1995CF1197, May 29, 2001)

Complainant has not presented direct evidence of discrimination. Her attempt to forge the date of her pregnancy test in order to create some type of direct evidence against Respondent is reprehensible. The only alternative for Complainant is to present, if she can, some indirect evidence of race discrimination, using McDonnell-Douglas v.Green, 411 U.S. 793 (1973). Under McDonnell-Douglas, once a complainant has established a prima facie case with indirect evidence, a rebuttable presumption of discrimination arises and the respondent must articulate a lawful reason for its actions. (Clyde, 564 N.E. 2d at 267). If respondent articulates a lawful reason for its actions, the presumption dissolves. (Id.). Once a respondent makes an articulation, the emphasis of the case changes and the decisive issue becomes whether the reason articulated by the respondent for its actions is a pretext for discrimination. (Clyde, 564 N.E. 2d at 267). Pretext can be established by showing the proffered reason has no basis in fact, or, that the proffered reason did not actually motivate the respondent, or, that it was insufficient to motivate the respondent. (Kier v. Commercial Union Ins. Co. , 808 F. 2d 1254, 1259 (7th Cir. 1987)). A showing of pretext allows that trier of fact to infer discrimination, but does not require the trier of fact to do so. (St. Mary's Honor Center v. Hicks , 509 U.S. 502, 511, 113 S. Ct. 2742 (1993)).

Based on the record in this matter, there are no issues of material fact as to whether Complainant's pregnancy played a part in Respondent's decision to terminate

Complainant. Complainant has not submitted competent, admissible evidence from which a fact finder may draw an inference of pregnancy discrimination.

In this instance, the evidence derived from the available facts supplied by the Respondent and Complainant does not contest Respondent's stated fact that Complainant was terminated for poor performance and insubordination. The available evidence contained in the record does not contest the fact that in July of 1999, Respondent had attributed a portion of financial losses from Complainant's assigned shop to Complainant. The uncontested facts also show that On August 5, 1999, Respondent's supervisor requested an accounting report from Complainant that was to be completed by August 9, 1999, and that she refused to comply with the request.

The facts show that Respondent was not aware of Complainant's pregnancy at the time she was disciplined and ultimately terminated. In fact, the record shows that Complainant herself was not aware of her condition until August 31, 1999, twenty-one days after her termination. Therefore, for the purposes of the Act, the first prong of the *prima facie* requirement has not been met in that Complainant has not shown that she was indeed pregnant at the time of the adverse action taken by Respondent.

In addition, Complainant has not presented any evidence that any other similarly situated non-pregnant employee was treated any differently under the similar circumstances. Therefore, Complainant has also failed to establish the third prong of the *prima facie* requirement. In the Matter of Sonia Rivera, Id. Furthermore, the facts show that Respondent had a legitimate reason for terminating Complainant, which was not related to her pregnancy.

Irrespective of Complainant's failure to establish a *prima facie* case of pregnancy-related discrimination, Complainant would not have prevailed under the McDonnell-Douglas analysis. The facts presented show that Respondent recommended disciplinary action against Complainant as early as July 16, 1999 for her cited poor performance. Complainant alleges that she informed her supervisor of her possible pregnancy sometime in August of 1999. Whatever adverse action that was taken as a result of the July 16, 1999 incident cannot be blamed on Complainant's pregnancy since Respondent clearly was not aware of her condition at that particular time.

CONCLUSION

Paragraph 8-106.1 of the Illinois Human Rights Act, 775 ILCS 5/101-1 et. seq., specifically provides that either party may move, with or without supporting affidavits, for a summary order in its favor. If the pleadings and affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a recommended order as a matter of law, the motion must be granted. The Commission has adopted the standards used by the Illinois courts in considering motions for summary judgment for motions for summary orders, and the Illinois Appellate Court has affirmed this analogy. Cano v. Village of Dolton, 250 Ill App. 3d 130, 620 N.E.2d 1200, 189 Ill. Dec. 833 (1st Dist. 1993).

There appears to be no direct or indirect evidence in the record to show that the Complainant terminated from her employment due to her pregnancy. As such, the Complainant has failed to establish a *prima facie* case of illegal discrimination. Taking the evidence in the record as competent, it appears that there is no genuine issue of

material fact on the issue of whether Complainant's pregnancy was a determining factor in Respondent's employment actions. Therefore, Respondent's Motion for Summary Decision should be granted as a matter of law.

RECOMMENDATION

Thus, for all of the above reasons, it is recommend that Respondent's Motion for Summary Decision be granted, and that the instant Complaint and underlying Charge of Discrimination be dismissed with prejudice as against Respondent.

HUMAN RIGHTS COMMISSION

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BY:
NELSON EDWARD PEREZ
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: December 23, 2002